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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,947	07/12/2001	Matthew Edward Aubertine	AUS9-2000-0328US1	1975

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EXAMINER	
VU, TUAN A	

ART UNIT	PAPER NUMBER
2193	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/903,947	AUBERTINE, MATTHEW EDWARD	
	Examiner	Art Unit	
	Tuan A. Vu	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 October 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. *20060106* .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This action is responsive to the Applicant's Appeal Brief filed 10/17/2005.

As indicated in Applicant's Brief, claims 1-15 are pending in the prosecution. In view of the arguments provided along with the Brief, the finality of the Office Action is now withdrawn and the case herein reopened for prosecution.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, and 18 of copending Application No. 09/903937 (hereinafter '937). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following observations.

Following is some examples of conflicting claims, notably claims 5, 10, 15:

As per instant claim 5, copending '937 claim 6 also recites a method including a plurality of directories, such method for compiling a file in the directories, and providing a master array of dependencies of the directories (e.g. *merging the dependency array with the*

master array of changes); providing a code change to provide an updated program (e.g. *providing a directory update mechanism*); providing associated dependency changes to the master array; and steps for

providing (dependency changes),

merging (with master array) ;

obtaining (dependency change);

determining (change is in a directory)

updating (directory in the master array)

adding (dependency change)

determining (another dependency change)

repeating (steps ...until all dependency..).

But '937 claim 6 does not recite compiling the updated program utilizing the updated master array wherein the directories file are compiled in an ordered manner based upon the dependencies of the pluralities of directories.

However, '937 claim 6 recites an update mechanism for assigning the directories wherein the associated dependencies are provided and subsequent update changes merged into the master array and assigning a directory to a next available processor in an ordered manner to allow the processor to compile one file in the directory; hence suggests a program operable with a plurality of directories (i.e. *update mechanism program*) being adjusted to enable file in a directory to be compiled in an ordered manner according to the dependencies changes provided to the program. Hence, it would have been obvious for one skill in the art at the time the invention was made to provide the update mechanism as a compilable software program, and compiling of such updated

program (upon dependencies changes being made thereto) so to utilize the updated dependencies (in the master array) for enabling an ordered manner of file compilation based thereupon.

As per instant claim 10, '937 claim 18 recites the same limitations and obvious variations of claim 10 (e.g. compiling an updated program); all of these features having been addressed above.

As per instant claim 15 (a computer-readable medium version of claim 10), '937 claim 18 recites the same limitations and obvious variations of claim 10 as addressed above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 6 and 11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 6 recites a system for compiling a computer program, and a method recited as 'the method' without any connection whatsoever with the system. Because of the non-connection due to this abrupt introduction of 'the method' which is recited as responsible for performing all the limitation steps of this system as claimed on the outset, one skill in the art would not be appraised on what this system consists of in terms of tangible components, in order for all the limitations in the claim to be implemented to achieve a result. Hence, absent any implementation or components from the system in connection with or subjected for interaction with the steps recited in the body of the claim, the system appears to be founded on no

interrelated elements or action leading to yielding no concrete, useful and tangible result. And as such, the claim amounts to an abstract non-practical idea; and is rejected for leading to a non-statutory subject matter pursuant to the following Practical Application Test.

> The Federal Circuit has recently applied the practical application test in determining whether the claimed subject matter is statutory under 35 U.S.C. § 101. The practical application test requires that a " useful, concrete, and tangible result" be accomplished. An "abstract idea" when practically applied is eligible for a patent. As a consequence, an invention, which is eligible for patenting under 35 U.S.C. § 101, is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful result. The test for practical application is thus to determine whether the claimed invention produces a "useful, concrete and tangible result".

Claim 11 recites a computer readable medium for minimizing the cycle in a program compiling, and a method recited as 'the method' for performing the steps in the rest of the claim. This deficiency is similar to that set forth above. Hence, the apparatus/product claim is not perceived as having tangible elements sufficiently claimed to support in interrelationship with the steps being performed, thus leading to no result. The claim also amounts to an abstract non-practical idea; and is rejected for leading to a non-statutory subject matter pursuant to the following Practical Application Test.

Claims 7-10, and 12-15 are also rejected for not remedying to the deficiency of the base claims.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 6 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 11 recite the limitation "the method" in line 3 of each claim respectively. There is insufficient antecedent basis for this limitation in the claim.

Claim Objections

8. Claims 3, 8, 9, 13 and 14 are objected to because of the following informalities:

a. Claims 3, 8 and 13 recite 'changes are provided (c) via a ... update mechanism' (2nd line respectively). There is no use of the "(c)" in this case unless this actually set to mean: as set in step (c) of claim 6 or claim 11.

b. Claims 9 and 14 recite 'the providing an update mechanism step (c)' should be corrected to better recite this as-- the providing of an update mechanism in (c) —as understood from interpreting the claim.

Appropriate correction is required.

Allowable Subject Matter

9. The allowable subject matter over the prior art in the view of the Applicant's arguments from the Appeal Brief can be listed as follows pending the resolving of the above rejections:

Mainly step *a*, step *c* and step *d* of claim 1, which amount to: directories containing a code file, a master array of directories listing dependencies of the directories; associated dependency changes updated to the master array; and using the updated master array to compile the code files in the directories in ordered manner based on the dependencies of said directories.

The independent claims with similar allowable subject matter would otherwise be allowable pending the above resolution, one of which is the timely filing of a Terminal Disclaimer such as mentioned by Applicant in the Appeal Brief of 10/17/05.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (272) 272-3735. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571)272-3719.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3735 (for non-official correspondence – please consult Examiner before using) or 571-273-8300 (for official correspondence) or redirected to customer service at 571-272-3609.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan A Vu

Patent Examiner,
Art Unit 2193
January 6, 2005